

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0328 CG
Denial of Annual Bingo License Renewal Application

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Charity Gaming - Qualified Organization

Authority: IC 4-32-6-20(1)(C); IC 4-32-9-5; IC 4-32-9-21; Advisory Board of Zoning Appeals of the City of Hammond v. The Foundation for Comprehensive Mental Health, Inc., 497 N.E.2d 1089 (1986); USAir, Inc. v. Department of State Revenue, 623 N.E.2d 466, 471 (Ind. Tax Ct.1993) (quoting Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs, 568 N.E.2d 1116, 1124 (Ind. Tax Ct.1991)).

The National Kidney Foundation of Indiana, Inc. Northwest Chapter a.k.a. National Kidney Foundation of Lake County (herein referred to as Petitioner) protests the Department's determination that it was not a qualified organization under IC 4-32-6-20.

STATEMENT OF FACTS

The Petitioner submitted its Indiana Charity Gaming Annual Bingo License Renewal Application on May 10, 1999. The Department's Denial was dated June 11, 1999. The reason for the Department's denial was the lack of information submitted by the Petitioner showing that its organization was a qualified organization. The Petitioner filed its protest on June 11, 1999. The hearing in the above referenced matter was held on August 31, 1999. The transcript of the hearing was received by the Department on September 20, 1999.

The Petitioner is a Chapter of the duly formed and chartered Indiana Affiliate (National Kidney Foundation of Indiana, Inc.) of the Not-for-Profit National Organization (National Kidney Foundation).

Additional facts will be discussed in the body of the opinion.

Charity Gaming - Qualified Organization

DISCUSSION

The Petitioner protests the Department's denial of the Petitioner's Annual Bingo License Renewal Application based upon the Department's determination that the Petitioner was not a qualified organization pursuant to IC 4-32-6-20. According to the Department's letter of denial dated June 11, 1999, the federal determination letter provided by the Petitioner indicates that only the parent organization in New York has a federal tax exemption. The Petitioner's national organization informed the Department that it did not recognize the Petitioner as an affiliate chapter. An additional letter of explanation was issued on July 13, 1999, by the Department, outlining its position after having reviewed additional documentation provided by the Petitioner. Additionally, the Department cited IC 4-32-9-1 which provides in pertinent part, "a qualified organization may only conduct an allowable event in the county where the principal office of the qualified organization is located." The Department found that the principal office of the Indiana Affiliate was and is located in Marion County, not Lake County where the Northwest Chapter is located.

The Petitioner contends that the Department's denial of its renewal application is contrary to the Indiana statutes, and the Department's own regulations governing gaming license applications, because the Chapter meets every prerequisite necessary for the issuance of a renewal license. The Petitioner also argues that it is a violation of the Chapter's due process rights for the Department to refuse to issue a renewal license, when the Chapter's application status has not changed over the years, based upon the Department's unpublished interpretation of the statutes and regulations. (Pet'r Br. pg. 2).

First and foremost, in the Department's analysis of this case, is the issue of equitable estoppel raised by the Petitioner. During the hearing the Petitioner in support of its position argued that the Department had consistently approved its renewal applications to conduct charity gaming in the past and therefore the Department must continue to renew its license. Indiana courts are especially reluctant to apply equitable estoppel against the government unless the elements of equitable estoppel are present and unless it is in the public interest to apply the doctrine. The elements of equitable estoppel are as follows:

- (1) A representation or concealment of a material facts;
- (2) The representation must have been made with knowledge of the facts;
- (3) The party to whom it was made must have been ignorant of the matter;
- (4) It must have been made with the intention that the other party should act upon it;
- (5) The other party must have been induced to act upon it.

See Advisory Board of Zoning Appeals of the City of Hammond v. The Foundation for Comprehensive Mental Health, Inc., 497 N.E.2d 1089 (1986). These five elements must be present in order for the Petitioner to raise and prevail on its estoppel argument. The Petitioner's argument for equitable estoppel fails because it was not ignorant of the facts as in element number 3. Title 4 of the Indiana Code sets out the statutory requirements for acquiring a charity gaming license.

Each year, a qualified organization must submit an application to the Department in order to be granted permission to conduct charity gaming. IC 4-32-9-5. There is no automatic renewal of a charity gaming license, and this is analogous to an Indiana tax return whereby, "[E]ach tax year stands alone." USAir, Inc. v. Department of State Revenue, 623 N.E.2d 466, 471 (Ind. Tax Ct.1993) (quoting Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs, 568 N.E.2d 1116, 1124 (Ind. Tax Ct.1991)). For example, if a taxpayer fails to pay the proper amount of tax for several years and the Department conducts an audit and finds that there is a deficiency the Department cannot be barred from making the assessment by equitable estoppel.

The Petitioner contends that the Chapter meets every prerequisite necessary for the issuance of a renewal license. The Petitioner states that it is a Chapter of the duly formed and chartered Indiana Affiliate of the Not-for-Profit National Organization. Indiana Code section 4-32-9-21 provides in pertinent part that, "... a qualified organization may only conduct an allowable event in the county where the principal office of the qualified organization is located. The principal office of a qualified organization shall be determined as follows:

- (1) ... if a qualified organization is a corporation, the principal office shall be determined by the street address of the corporation's registered office on file with the secretary of state.
- ...
- (2) If a qualified organization is affiliated with a parent organization that:
 - (A) is organized in Indiana; and
 - (B) has been in existence for at least five (5) years;the principal office shall be determined by the principal place of business of the qualified organization."

Assuming the Petitioner is a Chapter of the duly formed and chartered Indiana Affiliate the location of principal office, pursuant to IC 4-32-9-21, would be the principal place of business of the qualified organization. The principal office of the Indiana affiliate is Marion County; however, the Petitioner wishes to conduct charity gaming in Lake County which is not the same county where the principal office of its affiliate is located. In its hearing, the Petitioner fails to meet its burden of proof in showing that the local Chapter in itself qualifies as having established separate 501(c) status as per the Internal Revenue Code. Because this issue is dispositive of Petitioner's contentions with respect to charity gaming, the Department finds no need to discuss Petitioner's argument concerning whether it is in itself a qualified organization.

The Petitioner's protest is respectfully denied.

FINDING

The Petitioner's protest is denied.